

PARADISE OIL, WATER AND LAND DEVELOPMENT, INC.

IBLA 76-489

Decided September 8, 1976

Appeal from decision of the Colorado State Office, Bureau of Land Management, imposing new increased rental for reservoir right-of-way C-4437-R/W.

Set aside and remanded.

1. Administrative Procedure: Hearings -- Appraisals -- Hearings -- Rights-of-Way: Act of February 15, 1901

Under 43 CFR 2802.1-7(e), which provides that charges for a right-of-way on public lands may be revised after notice and an opportunity for hearing, it is improper to increase such charges without following the prescribed procedure.

APPEARANCES: Ralf Myers, President, Paradise Oil, Water and Land Development, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Paradise Oil, Water and Land Development, Inc., has appealed from the January 12, 1976, decision of the Colorado State Office, Bureau of Land Management, imposing new rental charges for appellant's reservoir right-of-way, C-4437-R/W. Appellant had been issued the right-of-way effective August 5, 1969, and paid a 5-year charge of \$ 4,075. The decision appealed from seeks to impose a charge of \$ 31,000 for the 5-year period commencing August 5, 1974. Appellant argues that the charge is excessive and is not fair market rental value. Appellant also asserts that it was never contacted during the appraisal process.

[1] The decision below recited that the charges were being imposed pursuant to 43 CFR Part 2800. However, 43 CFR 2802.1-7(e) provides as follows:

At any time not less than five years after either the grant of the permit, right-of-way, or easement or the last revision of charges thereunder, the authorized officer, after reasonable notice and opportunity for hearing, may review such charges and impose such new charges as may be reasonable and proper commencing with the ensuing charge year. [Emphasis added.]

The record does not indicate that appellant was given notice and an opportunity to be heard as required by the above regulation, and the case must therefore be remanded to the State Office. American Telephone and Telegraph Company, 25 IBLA 341, 346-47 (1976); Texas Gas Transmission Corporation, A-29856 (January 14, 1964); See Civil Aeronautics Board v. Delta Air Lines, Inc., 367 U.S. 316 (1961).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further action consistent with this opinion.

Frederick Fishman
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joseph W. Goss
Administrative Judge

